

**SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JOE COMES and RILEY PAINT, INC., an
Iowa corporation,

Plaintiffs,

v.

MICROSOFT CORPORATION, a
Washington Corporation,

Defendant.

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No. CV 05-562

**PLAINTIFFS' MOTION TO
REMAND**

**EXPEDITED RELIEF &
ORAL ARGUMENT
REQUESTED**

Plaintiffs Joe Comes and Riley Paint ("Plaintiffs"), on behalf of themselves and the two certified classes they represent, move the Court pursuant to 28 U.S.C. § 1447 for an Order remanding this case to the Iowa District Court for Polk County. Plaintiffs' Motion to Remand is based on the accompanying Memorandum in Support of Plaintiffs' Motion to Remand and the Affidavit of Roxanne Barton Conlin, which establish that this Court does not have jurisdiction over this lawsuit and states to the Court:

1. The removal is an improper use of 28 U.S.C. § 1446 because Plaintiffs' causes of action against Microsoft are based solely on Iowa law.
2. The Class Action Fairness Act of 2005 does not apply to this action, which was commenced prior to February 18, 2005 (the effective date of the Act).
3. Therefore, Plaintiffs request that the Court, pursuant to 28 U.S.C. § 1447(c), remand this case *sua sponte* to Iowa District Court for Polk County. Should the Court elect not to remand this matter *sua sponte*, Plaintiffs request, pursuant to LR 7.1(j), that the Court act on this motion and enter a remand order on an expedited basis.

4. Plaintiffs further seek an award of fees and costs in bringing this Motion, pursuant to 28 U.S.C. § 1447(c).

WHEREFORE, Plaintiffs pray that the Court: (1) summarily remand this action to the Iowa District Court for Polk County; or (2) enter a remand order following an expedited briefing and hearing schedule. Plaintiffs further pray for an award of costs and fees in bringing this Motion.

Dated: October 18, 2005.

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I hereby certify that on October 18, 2005 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of said filing to all CM/ECF participants.

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